

RESPONSE
SERIAL NO. 09/777,353

EXHIBIT K

Cybercillum, Inc.
www.cybercillum.com
Tel 480.705.6215
Fax 480.705.6926

cybercillum

Fax Cover

To: Patrick Cunningham Fax No: 480-671-6935
Company: _____ Pages: 3 (incl cover)
From: David Walter Date: 1/11/01
Re: _____ CC: _____

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

Provided are the additions that we would like added to the NDA. I look forward to meeting you next week

1711 West Greentree Drive • Suite 104 • Tempe, AZ 85284-1029

NONDISCLOSURE AGREEMENT

This Consulting and Nondisclosure Agreement (the "Agreement") is dated as of this seventh day of December, 2000, and is by and between Patrick Cunningham Group, Inc., an Arizona corporation, and Patrick Cunningham (collectively, "Client"), and CYBERCILIUM INC. a BUSINESS SERVICE PROVIDER ("Consultant").

RECITALS:

A. Client has developed a software application (the "Product") for use in certain transactions by a certain class of businesses. Client requires assistance in completing the development of the Product so that it may become marketable to the businesses for which it is being developed.

B. Consultant is skilled in programming and software development and is willing to assist Client in the further development of the Product, including assistance in retaining other specialized personnel to perform specific tasks in the development, such as programming.

C. Client is willing to retain Consultant, but only upon the terms and conditions of this Agreement. Agreement by Consultant to the nondisclosure and confidentiality provisions of this Agreement is a condition to Client being willing to disclose any information about the Product to Consultant.

AGREEMENTS:

In consideration of the recitals and mutual agreements of the parties, the parties agree:

1. Definition of Confidential Information. For the purposes of this Agreement, "Confidential Information" shall mean all information obtained by Consultant from or disclosed by Client, including any information or know-how, data, process, technique, design, drawing, program, formula or test data, trade secret, prices, algorithm, computer program (source and object code), relating to the Product, work in progress, future development, engineering, manufacturing, marketing, servicing, financing, or personnel matter relating to Client, the Product, sales, suppliers, clients, customers, employees, investors or business, whether in oral, written, graphic or electronic form; or any document, diagram, drawing, computer program, or other communication which is either conspicuously marked "confidential," known or reasonably known by Consultant to be confidential, or is of a proprietary nature, and is learned or disclosed in the course of discussion, studies, or other work undertaken between the parties; and any information which Client has identified to Consultant in writing as confidential before or within thirty days after disclosure. "Confidential Information" shall also include all information developed by Consultant which is, by the terms of this Agreement, to be owned by Client.

2. Nondisclosure Obligations. Consultant agrees (a) to hold Client's Confidential Information in strict confidence; (b) to exercise at least the same care in protecting Client's Confidential Information from disclosure as Consultant uses with regard to its own

**Nondisclosure Agreement
Patrick Cunningham Group, Inc.**

Confidential Information; (c) not to disclose such Confidential Information to third parties; and (d) not to use any Confidential Information for any purpose other than development of the Product on behalf of the Client except as set forth elsewhere in this Agreement.

3. Confidential Information Developed by Consultant. As part of the duties of Consultant, Consultant may develop or cause to be developed, processes, computer programs, or other material which, when applied to or used in the Product, will become Confidential Information, some of which may be protectible by patent or copyright. Such information, processes, developments, and other material shall be owned by Client, and Consultant agrees to execute any documents required to convey such material to Client, including the assignments of all copyrights and patents thereto. Consultant agrees that any developments to the Product made by him or any agent, employee or contractor of his shall constitute a work for hire owned by Client.

4. Disclosure to Employees and Others. Consultant may disclose Client's Confidential Information to its responsible employees with a bona fide need to know, but only to the extent necessary to carry out the purpose of this Agreement. Consultant shall be responsible for the conduct of its employees pursuant to this Agreement. Consultant agrees to instruct all such employees not to disclose such Confidential Information to third parties, including consultants, without the prior written permission of Client. Consultant may also disclose Client's Confidential Information to independent contractors retained by Client or by Consultant to assist with development of the Product, but only after such independent contractor has executed a nondisclosure agreement with or for the benefit of Client which contains restrictions on disclosure as least as comprehensive as those contained in this Agreement.

5. Removal of Confidential Materials. Consultant agrees not to remove any materials or tangible items containing any of Client's Confidential Information from the premises of Client without Client's consent. Consultant agrees to comply with any and all terms and conditions that Client imposes upon approved removal of such materials or items, including without limitation that the removed materials or items must be returned by a certain date, and that no copies of the removed materials or items are to be made.

6. Return of Confidential Information. Consultant agrees to promptly return to Client any documents reflecting Confidential Information and any copies made thereof that Consultant may have made, may have access to, or may receive or possess during the period of its discussions and/or business relationship. Upon termination of the business relationship between Client and Consultant, Consultant shall promptly deliver to Client any and all such information in its possession or under its control, except as the parties by prior express written permission or agreement have agreed to retain. Upon Client's request, Consultant will promptly return to Client all materials or tangible items containing Client's Confidential Information and all copies thereof.

* ANY TECHNOLOGY THAT IS USED TO DEVELOP THE SOLUTION THAT EXISTS IN THE PUBLIC DOMAIN IS NOT PROTECTED BY THIS

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NDA.